

BUSINESS LAW SECTION

CORPORATIONS COMMITTEE

COMMITTEE MEETING MINUTES FOR SEPTEMBER 7, 2001

Anaheim

(in conjunction with the State Bar of California Annual Meeting)

Friday, September 7, 2001

10:00 a.m.

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Anaheim Hilton Hotel in Anaheim, California on September 7, 2001.

Attendance was as follows:

MEMBERS PRESENT:

Keith Paul Bishop
David S. Caplan, Vice-Chair,
Communications
John C. Carpenter
Bruce Dravis
James K. Dyer, Jr.
Suzanne Graeser
Edmund A. Hamburger
Carol Lucas, Co-Chair
B. Keith Martin
David M. Pike, Assistant Secretary
Cynthia Ribas
Robert F. Stansell, Co-Chair
James R. Walther, Vice-Chair, Education
Nancy Wojtas

MEMBERS ABSENT:

Robert Cheatham
Nelson D. Crandall
Timothy J. Fitzpatrick
Eileen Lyon
Ethna M. Piazza, Secretary
Steven J. Tonsfeldt
Daniel J. Weiser
Neil J. Wertlieb, Vice-Chair, Legislation
B. Keith Martin
David M. Pike, Assistant Secretary
Cynthia Ribas
Robert F. Stansell, Co-Chair
James R. Walther, Vice-Chair,
Education
Nancy Wojtas

LIAISONS PRESENT:

Todd Vlaanderen, Secretary of State
Rosalind Tyson, SEC

GUESTS PRESENT:

David Marion, Executive Committee
Ann Walker, Executive Committee

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda which are not described in these Minutes.

I. ADMINISTRATIVE MATTERS.

A. Opening Remarks and Announcements.

The meeting was brought to order by Co-Chair Carol Lucas at approximately 10:00 a.m. Ms. Lucas noted that this was the final meeting of the 2000/2001 Committee year and that Jim Walther and Neil Wertlieb would be the Co-Chairs of the Committee for the upcoming year. Mr. Walther thanked Ms. Lucas and Robert Stansell for their service to the Committee and, on behalf of the Committee, presented Ms. Lucas and Mr. Stansell with a gift as a thank-you for their service on the Committee. There was also a brief discussion of the use of videoconferencing for meetings. Committee members expressed the view that in-person meetings are more effective, but that meetings by videoconference once or twice a year would be acceptable.

David Marion and Anne Walker from the Executive Committee attended the meeting. Mr. Marion briefly discussed the status of the blue-sky guide and said that Keith Bishop is doing a final review. Mr. Marion said that the blue-sky guide would be ready for publication in 2002. Ann Walker thanked the Committee for its good work.

B. Approval of Minutes of August 3, 2001 Meeting.

The draft minutes of the meeting of the Committee held on August 3, 2001, and previously circulated to the members, were approved with minor changes suggested by Jim Walther and Suzanne Graeser.

II. LIAISONS' REPORTS AND DISCUSSION.

A. Rosalind Tyson, Liaison from the SEC.

Ms. Tyson reported that Harvey Pitt was confirmed as the Chairman of the SEC in late August.

B. Todd Vlaanderen, Liaison from the Secretary of State.

Mr. Vlaanderen attended the meeting in lieu of Betsy Bogart. Mr. Vlaanderen reported that the legal staff at the office of the Secretary of State's office is now fully staffed, with five attorneys. He also reported that the business programs automation program has been approved and Waldeep Singh from the Secretary of State's office will be contacting the Committee for input. The Secretary of State will be purchasing the hardware to accept electronic transmission of documents but has to develop and approve the procedures for doing so. With respect to fax filing of documents with the Secretary of State, Mr. Vlaanderen reported that the Secretary of State wants to make sure that adequate procedures are developed with respect to the safeguarding of original signed documents and that fax filings are sent to a service company contracted by the Secretary of State, rather than to the Secretary of State's office directly. Dave Caplan noted that he is working with the bankruptcy court regarding electronic transmissions and said that procedures developed by the court may provide some guidance for the Secretary of State. Committee members discussed what would constitute an adequate signature with respect to electronic filings. Jim Dyer remarked that revised UCC Article 9 does not acknowledge the concept of an original signature, but talks about "records" instead. Committee members discussed filing procedures under revised Article 9 and Mr. Vlaanderen emphasized that the burden is on the filer to insure that a UCC filing is correct, since the Secretary of State's office does not review UCC filings for accuracy.

C. Jim Dyer, Liaison to the UCC Committee.

The UCC Committee met on September 5th. That committee is transitioning into a

new committee year and is focusing on the aftermath of revised UCC Article 9. The committee is fairly close to completing a model control agreement for a security interest in deposit accounts and is also considering publishing the model control agreement in one of the Business Law Section publications.

III. PENDING LEGISLATION/AFFIRMATIVE LEGISLATIVE PROPOSALS.

A. SB 400 (25102(o) Notice Filing).

Suzanne Graeser reported that the emergency 25102(o) regulations are now effective. She also reported that the Committee's comment letter regarding the 25102(o) regulations was submitted to the Department of Corporations. Ms. Graeser noted that two other comment letters were also submitted, both supporting the Committee's requested changes. Ms. Graeser stated that, although the Committee's most recent comments have not been incorporated into the emergency regulation, the suggested changes will be reviewed by the Department this Fall.

IV. WEB SITE PROJECTS.

A. Web Site Update.

Bob Stansell suggested that the Committee should consider establishing a bulletin board on the web site to allow practitioners to exchange information. Dave Caplan said that the State Bar does not now have the technical capability to do that, but it is in the process of upgrading its computer systems to, among other things, facilitate bulletin board communications on State Bar web sites.

B. Posting of Law Firm Communications/Advisories to Clients.

Ms. Lucas reported that, to date, no responses have been received from the Committee's letter to law firms requesting law firm communications for posting on the Committee's web site. Ms. Lucas asked that Committee members check with their law firms and, if possible, send to Dave Caplan client letters to be posted on the Committee web site.

C. Recent Developments Page.

Nancy Wojtas provided the Committee with a list of recent developments that might be appropriate for the Committee web site including:

- new legislation eliminating the requirement for a tax clearance certificate for a disappearing domestic corporation in a merger;
- new FASB 141 and 142 accounting standards;
- FASB report on accounting for financial assets;
- new SEC telephone book with direct numbers for SEC staff;
- changes to Delaware law regarding authority of non-directors to grant stock options;
- Nasdaq named as a "national securities exchange;" and
- California rule re: 10b5-1 now final as of July 1, 2001.

V. OTHER PROJECTS.

A. Opinion Task Force.

Ms. Lucas led a discussion regarding the opinion project and rewrite of the 1989 report of the Committee on legal opinions. Ms. Lucas reported that the Committee

update of the 1989 opinion report is ongoing. A working group has been formed to organize a rewrite of the report. Committee members interested in participating on the working group should contact Ms. Lucas or Nelson Crandall. In addition, Committee members should submit to Mr. Crandall as soon as possible their updates to the assigned sections of the 1989 report (case citations, update footnotes and text, determine if information should be added or deleted). In addition, the opinion task force is republishing the 1989 opinion report along with other relevant opinion materials. This information has been scanned, but Ms. Lucas requested that Committee members who have access to proofreading service contact her if they can volunteer such services to help proofread sections of the scanned material. Ms. Lucas also said that she would make available to Committee members in PDF format various opinion resource materials to assist members in their review of sections of the 1989 report.

B. Educational Activities.

Jim Walther reported that the panel presentation organized by the Committee for the annual meeting of the State Bar in Anaheim and held on September 6th was very successful. Mr. Walther also reported that the Committee will have a panel presentation at the winter meeting of the Business Law Section Education Institute held January 18-20, 2002 in San Diego. Bruce Dravis is organizing the presentation and said that the topic will be "down round" venture capital financings.

C. Business Law News Articles.

Ms. Lucas reported that the committee is responsible for at least one article per year for the Business Law newsletter. Mr. Dravis said that he was considering an update of a 1993 article comparing California and Delaware corporate law. Keith Bishop said that he had written an update several years ago that also included Nevada corporate law, but that a current update would be useful. He also suggested that Mr. Dravis contact Ann Walker, since she did some work on the original article. Mr. Dravis said that he would contact Committee members to assist in writing the article.

VI. PRACTICE ISSUES/NEW BUSINESS.

Mr. Stansell made a presentation of ongoing and suggested new projects for the Committee. Ongoing projects include:

- update to the Guide to Organizing California Corporations;
- maintaining liaisons to committees and determining if the Committee should establish liaisons with additional state bar committees;
- follow-through with SB399 (corporate conversions);
- blue-sky guide;
- Secretary of State fax filings;
- Committee web site forms project;
- posting of law firm communications on the Committee web site;
- legal opinion project; and
- educational programs.

Mr. Stansell suggested the following new projects:

- Section 25102(n) - amend to remove the notice filing as a condition to the exemption;
- Section 25118 - definition of "aggregate evidence of indebtedness" with respect to usury exemption - determine how this section works in practice and consider amending if there is ambiguity when it is applied in practice;

- Section 25102(f) - amend to provide for "reasonable belief" with respect to accredited investors;
- Section 166 - amend definition of "distribution to shareholders" to exclude a repurchase of shares issued pursuant to an issuance to employees under Section 408;
- revise Section 25102(o) regulations;
- Section 195 regarding electronic transmissions and definition of "written" and "in writing" - compare CA and SEC rules and determine if CA rules should be revised;
- Rule 261.548 and other Code Sections - review and update for outdate legislative references (for example, references to the Internal Revenue Code of 1954);
- constituency project - maintain and update an email mailing list for Committee communications; contact local bar associations to develop a broader mailing list; present educational programs in locations other than Los Angeles or San Francisco; invite chairs of local bar associations to attend one or more Committee meetings;
- invite outside speakers to make presentations at Committee meetings;
- establish a group of advisors (well-known practitioners) to affiliate with the Committee;
- potential articles for Business Law Section publications - (i) how to conduct a shareholder meeting and (ii) changes to option plans;
- monitor NMSIA implementation in California and other states.

In addition, Keith Bishop suggested that the Committee should be more active in commenting on federal securities law issues. Bob Stansell noted that it might be a good idea to establish a separate subcommittee to review SEC issues. Ann Walker commented that the Committee can establish subcommittees and task forces that include both members and non-members, either as standing subcommittees or subcommittees established to focus on one issue. Mr. Bishop further suggested that the Committee may want to consider working with the Department to review and update, if necessary, Department forms for compliance with the Administrative Procedures Act rules. Mr. Bishop also suggested that the Committee may want to examine the definition of "finance lender" and its application in California.

The meeting was adjourned at approximately 12:55 p.m.

/s/David M. Pike
David M. Pike
Secretary

Corporation Committee Meeting Minutes

